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Date of Decision: 15th September 1995

SPECIAL CIVIL APPLICATION NO. 5567 of 1982

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Kum. K.J. Brahmabhatt, Advocate, for Kum. V.P. Shah,
Advocate, for the Petitioner

Shri V.B. Gharaniya, Asst. Govt. Pleader for Respondents Nos. 1
and 2

Shri M.T.M. Hakim, Advocate, for Respondents Nos. 3 and 4

CORAM: A.N. DIVECHA, J.
(Date: 15th September 1995)

ORAL JUDGMENT

The order passed by the Director of Municipalities
(respondent No.1 herein) on 6th October 1981 in an appeal under
sec. 258(3) of the Gujarat Municipalities Act, 1963 ('the Act')

for brief) is under challenge in this petition under Art. 226 of the Constitution of India. By his impugned order, respondent No.1 partly accepted the order passed by the Collector of Banaskantha at Palanpur (respondent No.2 herein) under sec. 258 thereof holding that the donation accepted by the petitioner municipality for regularisation of the encroachment made by two cabin-holders (respondents Nos. 3 and 4 herein) was illegal and the donation amount was ordered to be refunded.

2. The facts giving rise to this petition move in a narrow compass. Respondents Nos. 3 and 4 had raised their respective cabins on the lands allotted to them by the petitioner-municipality. It appears that the term of allotment had expired and it was found by the petitioner municipality that respondents Nos. 3 and 4 had made some encroachment of the municipal land. It appears that they requested the petitioner municipality to regularise their encroachment and thereupon it was regularised and they stated to have voluntarily agreed to pay donation in the sum of Rs. 4601 each. A copy of their communication in that regard is at Annexure B to this petition. It appears that, pursuant thereto, the encroachment was regularised. Thereafter respondents Nos. 3 and 4 approached respondent No.1 with a representation against taking donation from them by the petitioner municipality for regularisation of the encroachment. A copy of their representation of 7th March 1979 to respondent No.1 is at Annexure C to this petition. It appears that it was brought to the notice of respondent No.2 also. He thereupon initiated the proceeding under sec. 258 of the Act. By his order passed on 23rd June 1981, respondent No.2 set aside the resolution passed by the concerned municipality on 18th September 1988 regularising the encroachment made by respondents Nos. 3 and 4 herein. Its copy is at Annexure E to this petition. The aggrieved municipality carried the matter in appeal before respondent No.1. By his order passed on 6th October 1981, respondent No.1 partly accepted it and set aside the order passed by respondent No.2 quashing the resolution regularising the encroachment but affirmed the order declaring acceptance of the donation to be illegal and refund of the donation amount to respondents Nos. 3 and 4 herein. Its copy is at Annexure F to this petition. The aggrieved municipality has thereupon approached this court by means of this petition under Art. 226 of the Constitution of India for questioning the correctness of the order at Annexure F to this petition to the extent it is against it.

3. The jurisdiction of the Collector under sec. 258 of the Act has been defined by this court from time to time. The latest ruling on the point is the one rendered by the Division Bench of this court in the case of Raghavbhai Arjunbhai and Another v. Amreli Nagarpalika and Another reported in 1994(1) G.L.H. 470. It has been clearly held therein that the

authority exercising powers under sec. 258(1) of the Act cannot upset any resolution of the municipality if it has come to be enforced and implemented. Sitting as a single Judge, the aforesaid Division Bench ruling of this court is binding to me. Even otherwise, I am in respectful agreement therewith.

4. The aforesaid Division Bench ruling of this court is on all fours applicable in the present case. The petitioner municipality appears to have passed one composite resolution bearing No.1131 on 18th September 1978 regularising the encroachment made by respondents Nos.3 and 4 herein as also payment of the donation amount. It was a composite resolution. It was implemented by payment of the donation amount by respondents Nos. 3 and 4 herein. Since the resolution was implemented, the authority exercising powers under sec. 258(1) of the Act could not have upset it in view of the aforesaid Division Bench ruling of this court. If that authority could not have done so, the appellate authority under sec. 258(3) of the Act also could not have done it as an appeal is a continuation of the original proceeding.

5. In view of my aforesaid discussion, the impugned order at Annexure F to the petition to the extent it is against the petitioner municipality cannot be sustained in law. It has to be quashed and set aside to that limited extent.

6. In the result, this petition is accepted. The order passed by the Director of Municipalities on 6th October 1981 under sec. 258(3) of the Act to the extent it has ordered refund of the donation amount to respondents Nos. 3 and 4 herein is quashed and set aside. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
